IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE A.J.SADASHIVA

WRIT PETITION No. 18652/1991

BETWEEN:

1. Gulabsab Hasanalisab Pendari,
 Major Occ: Agril

2. Shaukatali Husanalisab Pendari,
 Major, Occ: Agril

 Both are r/a Kalasapur, Tq:Gadag,
 Dist. Dharwad. .. Petitioners

 (By Sri F.V.Patil, Adv.,)

AND:

1. State of Karnataka,
 Deputy Commissioner,
 Dharwad.

2. Huch'chusab Budensab Pendari,
 Major, Occ: Agril., r/o Kalasapur,
 Tq: Gadag, Dist. Dharwad.

3. Sudheendra Ramarao Huilgol,
 Major, r/o Gadag, Station Road,
 Dist. Dharwad.

4. Fatima w/o Babusab Kukunur,
 Major, Occ: Household work,
 r/o Gadag Betageri, Tq: Gadag,
 Dist. Dharwad. .. Respondents

 (By Sri Umesh R Malimath, Adv., for R2;
 Sri K.H.Jagadish, GA, for R1)

This C.P is filed u/s 151 of CPC r/w u/s 17 of the KLR Act r/w Articles 226 and 227 of the Constitution of India that for the reasons stated in the accompanying the affidavit that this Hon'ble Court be pleased to consider this Application and the Appeal No.LRA 242/87 filed before the Land Reforms Appellate Authority, Dharwad, may be treated as Writ Petition, in view of the amendment to S.17 of the Land Reforms Act.

This Writ Petition coming on for prly. hearing this day, the Court made the following :-

O R D E R

Though this petition is listed for preliminary hearing, the same is heard on merits and disposed of by this order with the consent of the learned Counsel appearing on both the sides.

2. The order dated October 30, 1987 passed by the Land Tribunal, Gadag, is sought to be quashed by the petitioners in this petition.

3. The petitioners are the legal heirs of one Hasansabi Gudenasab Pendari, the elder brother of the second respondent. Hasansabi filed Form No.7 in respect of Sy.No.1/2 measuring 2 acres 24 guntas to register him as an occupantu/s 45 of the Karnataka Land Reforms Act, 1961 (for short "the Act"). The second respondent also filed a similar application to

register him as an occupant in respect of Sy.Nos.1/1 and 1/2 of Kalasapura Village. At the first instance the Tribunal rejected the application of the second respondent in so far as it related to Sy.No.1/2 and directed to register Hasansab as an occupant. That order was challenged by the second respondent before this Court. This Court by its order dated February 11, 1985 allowed the petition and remitted the matter to the Tribunal for fresh disposal in accordance with law. By the time the Tribunal took up the case for hearing Hasansab the original applicant had died. The petitioners came on record.

4. The second respondent produced an agreement alleged to have been made between him and his brother Hasansab to cultivate the land in question in equal share. It is also seen from the order that the second respondent filed a written statement alongwith the agreement. The Tribunal relied on the agreement and directed to register each of the applicants as tenants in respect of one half of the land in question. This order was challenged

before the District Land Reforms Appellate Authority. On the abolition of the Land Reforms Appellate Authority it was withdrawn by this Court and registered as this petition.

5. It is seen from the impugned order that the Tribunal did not make any reference to any evidence of the parties recorded by the Tribunal. It is also not even possible to draw any inference as to the recording of any statement of the parties. The document produced by the second respondent was relied on by the Tribunal even though it was not confronted to the petitioners and the witnesses was not subjected to cross-examination. The Tribunal failed to consider any evidence other than the agreement alleged to have been made between the second respondent and the deceased Hasansabi.

6. For the reasons aforesaid, this petition is allowed. The order dated October 30, 1987 passed by the Land Tribunal, Gadag, in No.KMR.SR.10+11. Kalasapura, is set aside only in so far as it relates to Sy.No.1/2 of Kalasapura Village and the matter is remitted to the Land Tribunal for fresh disposal strictly in compliance with Rule 17 of the Rules.

7. In the circumstances of the case, there is no order as to costs.

8. Office to transmit the records forthwith to the Tribunal.

Sd/-
JUDGE

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